

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 20TH DAY OF SEPTEMBER, 2018



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Chairperson
Civil Service Commission

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attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

MELISSA JOHNSON,

Petitioner,

v.

MORRIS COUNTY PUBLIC SAFETY

TRAINING ACADEMY,

Respondent.

OAL DKT. NO. PTC 03938-16

**IN THE MATTER OF MELISSA
JOHNSON, PASSAIC COUNTY
SHERIFF'S DEPARTMENT.**

OAL DKT. NO. CSV 16886-16
AGENCY DKT. NO. 2017-1323

Jeffrey S. Ziegelheim, Esq., for petitioner/appellant Melissa Johnson (Alterman
and Associates, attorneys)

Robert Greenbaum, Esq., for respondent Morris County Public Safety Training
Academy

Jose Santiago, Assistant County Counsel, for respondent Passaic County
Sheriff's Department (William J. Pascrell III, County Counsel, attorney)

Record Closed: May 2, 2018

Decided: June 1, 2018

BEFORE ELLEN S. BASS, ALJ:

STATEMENT OF THE CASE

In this consolidated proceeding, petitioner/appellant Melissa Johnson appeals both her dismissal from the Morris County Public Safety Training Academy (the Academy) and her removal from employment with the Passaic County Sheriff's Department (Passaic), for inability to perform her duties. N.J.A.C. 4A:2-2.3(a)(3).

PROCEDURAL HISTORY

On February 29, 2016, the Academy dismissed Johnson for failing to fully participate in and complete more than 20 percent of the required physical-training sessions. On October 11, 2016, Passaic issued a Final Notice of Disciplinary Action (FNDA) removing Johnson as a correction officer effective February 29, 2016, citing her probationary status and her failure to complete the required Academy course.

Johnson appealed to the Police Training Commission (PTC) by letter dated March 3, 2016, and the contested case was transmitted to the Office of Administrative Law (OAL) on March 11, 2016. She appealed Passaic's decision via letter dated October 18, 2016, and the Civil Service Commission transmitted her appeal to the OAL on November 4, 2016. An order consolidating the two appeals was entered on December 21, 2016. That order directed that, in accordance with N.J.A.C. 1:1-17.6 and N.J.A.C. 1:4A-17.1, the PTC has the predominant interest in reviewing Johnson's appeal of her termination.

After several unsuccessful attempts to achieve an amicable resolution, the matter proceeded to hearing on May 2, 2018. Via letter dated April 4, 2018, counsel for Passaic advised that "the Passaic County Sheriff's Department will not be appearing or participating in the hearing." Accordingly, only the Academy and the petitioner/appellant appeared.

FINDINGS OF FACT

The underlying facts are uncontroverted, and I **FIND**:

Johnson was hired by Passaic as a county correctional officer in April 2015. Between April and September 2015 she worked as a probationary officer pending her entry into the Passaic County Training Academy. Johnson worked out regularly prior to beginning her course at the Academy; she ran on a treadmill and used an elliptical machine at the gym, and went to CrossFit. She passed a physical assessment at the Passaic Academy on or about September 10, 2015. Her time there was progressing well when, on October 5, 2015, she injured her foot during a run.

Johnson was sent to a doctor via Workers' Compensation, who restricted her activity; advised her to limit pressure on her foot; and advised that she neither run nor jump. She was given an air cast and soft boot. Johnson testified that her injury was ultimately diagnosed as a stress fracture, although the medical documentation that she shared spoke only to a foot and ankle sprain. But in any event, it is uncontroverted that Johnson was placed on light duty on October 9, 2015, which a memorandum defined as "no inmate contact/sedentary duty." A medical report of that date confirmed various activity restrictions, to include limits on lifting and carrying, limits on pushing and pulling, and the continued directive that Johnson engage in "no running."

A doctor's note dated October 20, 2015, indicated that Johnson could return to full duty, "with [the] exception of no running or jumping." She did return to full duty the next day, but continued to wear her air cast. And after a day of work, she could engage in no further physical activity; rather, she went home and rested. Johnson continued to be followed by physicians into December 2015. As late as December 1, 2015, a doctor's note indicated that she should continue to refrain from running and jumping. On December 15, 2015, Johnson was released to full duty with no restrictions. But, she continued to use the air cast until January 12, 2016, when she was advised that Passaic was sending her to the Morris County Academy to resume her training. Johnson stressed that she had not been to the gym, or otherwise prepared herself physically for the work she would need to perform at the Academy, due to her injury.

Johnson began her course at the Academy with an orientation on January 25, 2016. She readily admitted that she was not ready for the physical aspects of her work

at the Academy; she did not successfully complete the required physical-training component. Indeed, Johnson stated quite unequivocally that her dismissal was appropriate, and that her only complaint against the Academy was that its personnel should not have accepted her in the first place, in light of her personal circumstances.

Lt. Mark Meehan is the lead fitness instructor at the Academy. He explained that there are several components of training, to include academics, shooting, and fitness. To pass the fitness component a recruit must fully participate in 80 percent of the sessions; a recruit would be terminated after eight sessions if she had not fully participated. Meehan clarified that "fully participate" means demonstrating an ability to correctly perform the required exercise drills.

Meehan spoke well of Johnson, describing her as an earnest, hard-working recruit whom he would welcome back to the Academy at any time. He indicated that he and his staff tried to assist Johnson, and were anxious for her to succeed. But from the first day, Johnson presented with strength and endurance limitations that impeded her ability to keep up with the Academy program. She could not run at the required pace, and could not perform the required push-ups and sit-ups. Meehan was in communication with Passaic, and alerted the personnel there that Johnson was struggling. Meehan did not receive any information about Johnson's medical history, nor was he made aware about her withdrawal from the prior academy in Passaic County. But Meehan implied that this background would have been of no moment, as the fitness requirements cannot be waived, regardless of the reason. Meehan did confirm that physical conditioning is critical prior to starting the Academy, and that without such conditioning a recruit is unlikely to succeed. He moreover confirmed that a recruit like Johnson, who was just recovering from an injury, would have a very difficult time with the physical aspects of the Academy program.

CONCLUSIONS OF LAW

Discharge from the Training Academy

The Police Training Act mandates successful completion of a basic training course at a school approved by the PTC as a prerequisite to permanent appointment as a correction officer. N.J.S.A. 52:17B-68.1. The PTC prescribes standards for approval of police training schools and the minimum qualifications for their instructors, and "prescribe[s] the curriculum, the minimum courses of study, attendance requirements, equipment and facilities, and standards of operation for such schools." N.J.S.A. 52:17B-71(a)-(d).

A recruit is eligible for certification by the PTC when the Academy director affirms that "[t]he trainee has achieved the minimum requirements set forth in the basic course applicable to his or her appointment and has demonstrated an acceptable degree of proficiency in the performance objectives contained in the particular basic course." N.J.A.C. 13:1-5.1(a)(1). The Academy has the power and responsibility "[t]o implement the required curriculum" and "[t]o dismiss a trainee who has demonstrated that he or she will be ineligible for Commission certification, for unacceptable behavior or for other good cause." N.J.A.C. 13:1-7.2(a)(8). "Good cause" has been defined as protection from arbitrary discharge, and requires that termination be motivated by legitimate performance-related concerns. See Greenwood v. State Police Training Ctr., 127 N.J. 500 (1992).

I **CONCLUDE** that good cause existed for Johnson's termination by the Academy. Although by all accounts Johnson tried her best, and was an otherwise excellent and desirable recruit, she was simply not physically prepared to successfully complete the Academy's course of study. She does not contend otherwise. An inability to perform the physical aspects of Academy training constitutes good cause for termination. See DeRogatis v. Jersey City Police Dep't, CSV 9557-95 and PTC 4576-95, Initial Decision (September 7, 2000), adopted, Merit Sys. Bd. (October 24, 2000), <http://njlaw.rutgers.edu/collections/oal/>; Martin v. Jersey City Police Acad., PTC 11501-06, Initial Decision (October 3, 2007), <http://njlaw.rutgers.edu/collections/oal/>; Pantoliano

v. Bergen Cty. Police Acad., PTC 9806-02, Initial Decision (November 27, 2006), <http://njlaw.rutgers.edu/collections/oal/>.

I **CONCLUDE** that the Academy's action in dismissing Johnson from the basic training course was consistent with applicable law and should be upheld.

Discharge from the Passaic County Sheriff's Department

The Civil Service Act and the regulations promulgated pursuant thereto govern the rights and duties of a civil service employee. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1, et seq. A civil service employee who commits a wrongful act related to his or her duties, or gives other just cause, may be subject to major discipline. See N.J.S.A. 11A:2-20; N.J.A.C. 4A:2-2.2; N.J.A.C. 4A:2-2.3. The issues to be determined are whether the employee is guilty of the charges brought against her and, if so, the appropriate penalty, if any, that should be imposed. Henry v. Rahway State Prison, 81 N.J. 571 (1980); W. New York v. Bock, 38 N.J. 500 (1962).

Passaic terminated Johnson's employment due to her inability to perform her duties. That inability was a direct result of her failure to successfully complete the training course at the Academy. N.J.A.C. 4A:2-2.3(a)(3). I **CONCLUDE** that Passaic's action was consistent with the statutory scheme. In Gottlieb v. Monmouth County Sheriff's Office, 95 N.J.A.R. 2d (CSV) 573, the administrative law judge held:

The controlling statute, N.J.S.A. 52:17B-68.1 leaves no room for discretion. Before permanent appointment, there must be completion of the Basic Police Training Commission course for correction officers [C]ivil Service rules do not anticipate continued employment of law enforcement officers who do not complete the Police Training Commission course, if so required. . . .

. . . [T]he New Jersey Department of Personnel and the Merit System Board may only look to the fact, or not, of course completion. Here, there was none. For that reason, with a threshold condition unmet, the appointment must cease.

The training laws establish a classification of temporary or probationary employment until successful completion of the mandatory program of training. Borger v. Borough of Stone Harbor, 178 N.J. Super. 296, 301-02 (Ch. Div. 1981).

Johnson urges that Passaic treated her unfairly because its personnel sent her back to the Academy immediately after recovery from an injury, and without affording her the time needed to become physically prepared for the rigors of the training course. But, she offered no legal support for the notion that Passaic, having withdrawn her from a prior Academy due to an injury and placed her on light duty, was further obliged to afford her time to physically prepare to re-enroll in the required Academy course. Indeed, to the contrary, the case law is clear that Passaic was under no obligation to "recycle" Johnson, or provide her with multiple chances to successfully complete her training at the Academy. See Crespo v. Passaic Cty. Police Acad., PTC 7453-05 and CSV 3476-05, Initial Decision (July 14, 2006), adopted, PTC (August 21, 2006), <http://njlaw.rutgers.edu/collections/oal/>; see also DeRogatis, CSV 9557-95 and PTC 4576-95, Initial Decision (September 7, 2000), adopted, Merit Sys. Bd. (October 24, 2000), <http://njlaw.rutgers.edu/collections/oal/>; McGorty v. Cty. of Hudson, CSV 9567-05, Initial Decision (March 14, 2006), adopted, MSB (May 12, 2006), <http://njlaw.rutgers.edu/collections/oal/>.

Accordingly, I **CONCLUDE** that Passaic's determination to terminate petitioner's employment for failure to complete the Academy, a sine qua non to a permanent appointment, was within the scope of its authority. But, notwithstanding Passaic's clear authority to end its relationship with Johnson, under the totality of the circumstances presented here, removal is too severe a result. The proper outcome can be found by reference to Gottlieb, where, under analogous facts, the administrative law judge acknowledged that although the matter before him was a disciplinary appeal, the appellant there had not been charged with any wrongdoing. The judge noted that "[t]he appointing authority acted only on what it perceived, correctly, to be a compulsion of law. Appellant failed to meet a threshold requirement because of injury, rather than because of a culpable act or omission." Gottlieb, 95 N.J.A.R. 2d (CSV) at 574. In its final decision, the Merit System Board determined that the "harsh consequences of a

removal which would preclude the appellant from seeking future public employment should be modified . . . [and] changed to a resignation in good standing." Id. at 575.

Here too, I **CONCLUDE** that "[t]he interests of all parties are better protected and a proper decision is effected by [a] change in termination status." Ibid.; see also Raymond v. Cty. of Hudson, CSV 1224-05, Initial Decision (November 7, 2005), adopted, Merit Sys. Bd. (February 9, 2006), <http://njlaw.rutgers.edu/collections/oal/>. I **CONCLUDE** that while Passaic's actions found full support in the law, a fairer, more equitable, result is one that will permit Johnson to pursue public employment in the future.

ORDER

Based on the foregoing, it is hereby **ORDERED** that the action of respondent Morris County Public Safety Training Academy dismissing Johnson from the basic training course for good cause is **AFFIRMED**.

I further **ORDER** that the action of respondent Passaic County Sheriff's Department removing Johnson is **MODIFIED** to reflect a resignation in good standing.

I hereby **FILE** my initial decision with the **POLICE TRAINING COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **POLICE TRAINING COMMISSION**, which by law is authorized to make a final decision in this matter. If the Police Training Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Pursuant to N.J.A.C. 1:1-17.8, upon rendering its final decision the **POLICE TRAINING COMMISSION** shall forward the record, including this recommended decision and its final decision, to the **CIVIL SERVICE COMMISSION**, which may

subsequently render a final decision on any remaining issues and consider any specific remedies that may be within its statutory grant of authority.

Upon transmitting the record, the **POLICE TRAINING COMMISSION** shall, pursuant to N.J.A.C. 1:1-17.8(c), request an extension to permit the rendering of a final decision by the **CIVIL SERVICE COMMISSION** within forty-five days of the predominant-agency decision. If the **CIVIL SERVICE COMMISSION** does not render a final decision within the extended time, this recommended decision on the remaining issues and remedies shall become the final decision.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DEPUTY ATTORNEY GENERAL, POLICE TRAINING COMMISSION, Richard J. Hughes Justice Complex, PO Box 085, Trenton, New Jersey 08625-0085**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 1, 2018

DATE



ELLEN S. BASS, ALJ

Date Received at Agency:

June 1, 2018

Date Mailed to Parties:

JUN 5 2018

sej

APPENDIX

WITNESSES

For petitioner/appellant:

Melissa Johnson

For respondent Morris County:

Mark Meehan

For respondent Passaic County:

None

EXHIBITS

For petitioner/appellant:

P-1 Medical records

For respondent Morris County:

R-1 Memorandum

For respondent Passaic County:

None